BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.03.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)Nos.1857, 1860 & 1863 of 2021
and
WMP(MD)Nos.1593, 1597, 1598, 1599, 1602 & 1603 of 2021

Tvl.Shri Balaji Steels & Hardwares,
No.8-A/3, Sivasakthi Nagar,
Thanthonimalai Main Road,
Karur District. ... Petitioner in all cases

Vs.

The State Sales Tax Officer,
Karur-3 Assessment Circle,
Karur,
Karur District. ... Respondent in all cases

Common Prayer: Writ petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned proceedings of the respondent for the assessment year 2013-14, 2014-15, 2015-16 vide proceeding No.TIN No.33663767645/2013-14, 2014-15, 2015-16 respectively dated 05.06.2017 and quash the same as illegal and devoid of merits and direct the respondent to re-do the assessment, without influence of the proposal of the Enforcement Authority, after giving adequate opportunity to the petitioner.

in all cases :

For Petitioner : Mr.Raja Karthikeyan
For Respondents : Mr.G.Arjunan, Government Advocate

COMMON ORDER

Heard the learned counsel on either side.

2.At the very outset, the learned counsel appearing for the petitioner submitted that the entire tax claimed under the impugned orders has already been remitted by the petitioner and the petitioner is constrained to move this Court only because of the levy of huge penalty amount. The learned counsel for the petitioner would further state that if the impugned orders are set aside and the matters are remitted to the file of the respondent, he will not ask refund of the tax amount already remitted but abide by the orders that will be passed after remand. The submission of the learned counsel for the petitioner is recorded.

3.The respondent has filed his counter affidavit and the learned Government Advocate for the respondent took me through the averments set out therein. He would primarily argue that the writ petitions having been filed after a gap of three and half years are not maintainable and they deserve to be dismissed on the ground of laches.

4.The orders impugned in the writ petitions were passed as early as on 05.06.2017. I wanted to know as to why this Court should entertain a challenge to the impugned orders after a gap of more than three and half years. The learned counsel for the petitioner claims that the petitioner was not served with the impugned orders. The respondent authority however convincingly established before this Court that all the impugned orders were sent through registered post to the address of the petitioner.

5.I am satisfied that the orders were sent to the correct address of the petitioner. The registered post was however returned with the endorsement "left". Of course, this would constitute service on the petitioner. The petitioner counsel would claim that the authority should also affix the impugned orders in some conspicuous place at the dealers known place of business in the presence of two witnesses. In as much as this requirement set out in Rule 19(1)(d) of the Tamil Nadu Value Added Tax Rules, 2007 has not been complied with, this Court should come to the conclusion that the impugned orders were not served on the petitioner herein.

6.But I am not able to agree with the said contention. Rule 19 (1) of the said Rule reads as follows :

> "**19.Service of notices, summons or orders.**- (1)The service on a dealer of any notice, summons or order under the Act or these rules may be effected either electronically or manually in any of the following ways, namely :-
>
> (a)by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative.
>
> Explanation.- Endorsement by person who delivers the notice, summon or order of having tendered or given will be proof for the purpose of this sub-rule ; or
>
> (b)if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family ; or
>
> (c)by sending it to the address of the dealer by registered post ; or
>
> (d)if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence in the presence of two independent witnesses.

(e)By electronic mode, through the registered electronic user account of the dealer in the website of the Commercial Taxes Department or through the registered electronic mail address of the dealer.

The aforesaid Rule states that service on dealer may be effected by sending it to the address of the dealer through registered post. This has been done. If the petitioner had left the premises in question the authority cannot be blamed for the same. The petitioner's counsel would state that during the relevant time, there was some misunderstanding between the partners and that therefore, the business itself had been shut down. If the dealer was not available in the said place and the registered post addressed to him had to be returned with the endorsement “left”, I fail to see as to what purpose will be served by affixing the impugned orders. That will be a case of useless formality.

7.I therefore hold that the authority has complied with the requirement set out in Rule 19(1) of the Tamil Nadu Value Added Tax Rules, 2007. However, I find considerable merit in the petitioner's contention that the assessment of the petitioner having been completed on deemed assessment basis, the respondent if at all could have invoked Section 27 of the Tamil Nadu Value Added Tax Act, 2006 and not Section 22(4) of the Act. That apart, in the case on hand, no personal hearing was given to the petitioner herein. Since the petitioner had remitted the tax in question and since the petitioner appears to be unaware of the impugned orders, in the interest of justice, I entertain this challenge to the impugned orders and quash the same.

8.The writ petitions are allowed. The matters are remitted to the file of the respondent for passing orders afresh in accordance with law. The remittances already made by the petitioner in respect of the taxes covered by the impugned orders will abide by the final order to be passed by the respondent and the petitioner is not entitled presently to any refund of the same. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

skm

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The State Sales Tax Officer,
Karur-3 Assessment Circle, Karur,
Karur District.

+1 CC to M/s.SPL GP (SR-10573[F] dated 11/03/2021)

W.P.(MD)Nos.1857, 1860 &
1863 of 2021
10.03.2021

mj(CO)
TR(28.04.2021) 4P 3C